COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Laliberté v. Québec Revenue Agency,* 2025 BCCA 372

Date: 20251007
Docket: CA50836

2025 BCCA 372 (CanLII)

Between:

Benoît Laliberté

Applicant/Appellant
(Petitioner)

And

Québec Revenue Agency and Cour du Québec

Respondents
(Respondents)

Before: The Honourable Justice Dickson
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated July 3, 2025 (*8640025 Canada Inc. (Re)*, 2025 BCSC 1268, Vancouver Docket S1610905).

Oral Reasons for Judgment

The Applicant/Appellant, appearing in person:	B. Laliberté
Counsel for the Respondent, Québec Revenue Agency (via videoconference):	E. Labbé S.D. Pinsonnault
Place and Date of Hearing:	Vancouver, British Columbia September 16, 2025
Place and Date of Judgment:	Vancouver, British Columbia October 7, 2025

Summary:

The applicant seeks leave to appeal an order dismissing an application to set aside a penal conviction under the Québec Tax Administration Act, CQLR c. A-6.002. He argues the penal conviction was contrary to a stay order issued by the Supreme Court of British Columbia and the judge erred in refusing to set it aside. Held: Application dismissed. The interests of justice would not be served by granting leave to appeal.

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[1] **DICKSON J.A.**: The applicant, Benoît Laliberté, seeks leave to appeal an order dismissing what the judge described as an application to set aside his penal conviction under the Québec *Tax Administration Act*, CQLR c. A-6.002. The application was brought in the context of a British Columbia *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [*CCAA*] proceeding.

Background

[2] Mr. Laliberté was the controlling mind of several affiliated companies known as TNW Group. The TNW Group sold telephones and other telecommunication services in various provinces in Canada.

[3] Included in the TNW Group were four companies that were subject to *CCAA* proceedings in British Columbia. Four other TNW companies failed to remit and report source deductions that were the subject of Mr. Laliberté's penal proceedings in Québec.

[4] Although all eight companies were affiliated as part of the TNW Group, there is no overlap between the specific corporate parties in the *CCAA* and the Québec penal proceedings.

CCAA proceedings

[5] On November 25, 2016, three TNW Group companies filed a *CCAA* petition in the Supreme Court of British Columbia. One other company was made subject to the proceedings but was not added as a petitioner.

[6] On November 30, 2016, an amended and restated initial order ("ARIO") provided for (among other things) the appointment of a monitor and a stay of

proceedings under s. 11.02 of the *CCAA*. One of the provisions of the ARIO stayed actions in respect of the petitioner or its business or property. Another stayed proceedings against directors of the petitioner for any obligation of the petitioner under s. 11.03 of the *CCAA*.

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[7] The respondent, Québec Revenue Agency ("QRA"), filed a claim as a creditor of one of the *CCAA* parties in the *CCAA* proceedings. However, the claim was filed past the claims bar date, and the QRA had no further involvement in those proceedings.

[8] No plan of arrangement was presented to the creditors for approval and the proceedings culminated in liquidation of the *CCAA* parties' assets. On February 1, 2021, the stay of proceedings expired. On August 18, 2022, the monitor was discharged in relation to the assets, undertakings, and property of the *CCAA* parties.

Québec penal proceedings

[9] On May 8, 2018, the Direction Principale des Poursuites Pénales ("DPPP") of the QRA brought penal proceedings against Mr. Laliberté by way of a statement of offence alleging eight violations of ss. 62 and 62.01 of the Québec *Tax Administration Act*.

[10] The charges against Mr. Laliberté were for causing four TNW companies to fail to report or remit any of the source deductions collected from approximately 125 employees from 2011–2017, totaling $1,621,263.04.

[11] The four companies in question were different from the *CCAA* parties. In other words, there was no overlap between the corporate parties in the *CCAA* and penal proceedings.

[12] Following a lengthy trial, Mr. Laliberté was convicted on all counts on December 3, 2024. On May 30, 2025, he was sentenced to 48 months in prison and personally fined $2,042,578.79. He has appealed his conviction and sentence to the Superior Court of Québec.

Application to set aside penal conviction

[13] Mr. Laliberté applied to the Supreme Court of British Columbia to set aside his penal conviction on the basis that it was contrary to the 2016 stay order issued by the Supreme Court in the *CCAA* proceedings. He sought an order declaring that the penal proceedings in Québec should not have commenced and barring the QRA from recovering fines or penalties.

[14] In reasons indexed at 2025 BCSC 1268, the judge dismissed Mr. Laliberté's application, finding the penal proceedings in Québec were not subject to the *CCAA* stay: at para. 23.

[15] The judge began his reasons by reviewing the background facts, including the *CCAA* and Québec penal proceedings. In doing so, he noted that as part of his defence in the Québec penal proceedings, Mr. Laliberté argued that the proceedings were illegal because they violated the *CCAA* stays. However, the judge stated the Québec Court rejected this defence and he set out the following extract from the decision of that Court:

> [22] As of part his defence in the Penal Proceedings, Mr. Laliberté argued that the proceedings were illegal because they violated the *CCAA* stays. The Court rejected this defence as follows [translation]:
>
> > [223] … [T]he stay of proceedings provided for in the Order applies only to civil suits. Penal proceedings, i.e. those taken by an agency responsible for the application of a federal or provincial law, such as the Plaintiff, are not covered by the stay of proceedings provided for in the Order. Thus, the stay of proceedings provided for in the Order does not prevent the Plaintiff from issuing a statement of offence to Laliberté.
> >
> > …
> >
> > [236] In this case, Laliberté alleges that paragraph 25 of the Order staying proceedings against the directors of 8640025 and Teliphone Data prevents the Plaintiff from instituting the present penal proceedings against him. This argument does not stand up to analysis. First, to give such a scope to paragraph 25 of the Order contravenes the jurisprudential principle that criminal courts are not subject to the control of civil courts, as well as the provisions of the CCAA codifying this principle. A stay of proceedings order issued under s. 11.02 or 11.03 of the CCAA does not de facto stay criminal proceedings, as provided for in subs. 11.1(2) of the CCAA.

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> [237] Second, in his argument, Laliberté omitted any reference to paragraph 21 of the Order, which clearly states that actions, suits or other proceedings taken by a regulatory body are not stayed, as provided for in s. 11.1 of the CCAA.
>
> [238] Thus, a reading of paragraph 25 of the Order, in conjunction with the other paragraphs of the Order and the provisions of the CCAA, makes it clear that the stay of proceedings provided for in that paragraph does not include penal proceedings and, consequently, did not prevent the Plaintiff from issuing a statement of offence to Laliberté in May 2018.

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[16] After quoting from the decision of the Québec Court, the judge set out his analysis. In explaining why he did not accept Mr. Laliberté's argument the QRA had circumvented the *CCAA* process and the ARIO, he stated, first, that the stay expired on February 1, 2021, long before Mr. Laliberté's 2024 trial.

[17] Second, the judge found that even while the stay was in effect, it did not extend to proceedings against Mr. Laliberté as the directing mind of the penal parties. Rather, the ARIO stayed proceedings against the *CCAA* parties*,* proceedings that affected their business or property, and proceedings against directors of the *CCAA* parties relating to obligations of the *CCAA* parties: at para. 26.

[18] Third, the judge pointed to the *CCAA* proceedings, where Mr. Laliberté drew a clear line between the *CCAA* parties and the rest of the TNW Group, including the penal parties: at para. 27. He noted that this separation was accepted by the Supreme Court and Court of Appeal for British Columbia (See 2017 BCCA 303 at para. 54).

[19] Fourth, the judge stated that he respectfully agreed with the Québec Court's conclusion that the stay of proceedings did not extend to penal or criminal proceedings, which were exempt from the *CCAA* stay: at para. 28. He went on to explain that under the *CCAA*, a stay does not stay criminal proceedings and cited *Milner Greenhouses Ltd. v. Saskatchewan*, 2004 SKQB 160 at paras. 24–29 for the proposition that "a *CCAA* stay does not apply to legal sanctions against alleged wrongdoers so long as the sanctions are penal rather than commercial in nature": at para. 32. He also explained that the fines and penalties imposed by the Québec

Court relate to tax offences but are punitive in nature and not a mechanism for recovering tax debts: at para. 33.

Law

Whether leave should be granted

[20] The well-established test for leave to appeal was articulated by Justice Saunders in *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 at para. 10 (Chambers):

a) whether the point on appeal is of significance to the practice;

b) whether the point raised is of significance to the action itself;

c) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and

d) whether the appeal will unduly hinder the progress of the action.

[21] All four criteria are considered under the rubric of and the overarching consideration of the interests of justice: *Hanlon v. Nanaimo (Regional District)*, 2007 BCCA 538 at para. 2 (Chambers); *Vancouver (City) v. Zhang*, 2007 BCCA 280 at para. 10 (Chambers).

[22] The party seeking leave to appeal bears the onus of establishing the conditions for leave are met: *British Columbia Teachers' Federation v. British Columbia (Attorney General)* (1986), 4 B.C.L.R. (2d) 8 at 11, 1986 CanLII 1089 (C.A. Chambers).

[23] In assessing the merits, the applicant must be able to show that the proceeding is "reasonably founded or arguable": *Keremelevski v. British Columbia (Workers' Compensation Board)*, 2019 BCCA 338 at para. 3 (Chambers), aff'd 2019 BCCA 428 at para. 4.

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[24] Where there is no prospect of success on appeal, a chambers judge performs a gatekeeping function in refusing leave, ensuring that “judicial resources are not expended on matters that do not merit the attention of a division of the Court”: *Teck Cominco Metals Ltd. v. British Columbia (Minister of Revenue)*, 2009 BCCA 3 at para. 27 (Chambers).

Analysis

[25] Mr. Laliberté contends that the criteria for granting leave are met and it is in interests of justice for leave to appeal to be granted. In his submission, the judge erred by refusing to grant the declaration he sought and permitting the QRA to bypass the British Columbia *CCAA* proceedings and essentially become a super priority creditor by pursuing him personally for money in Québec. In other words, he says, the proposed appeal has *prima facie* merit.

[26] In support of his submission on the merits of the proposed appeal, Mr. Laliberté describes his conviction as statutory, not penal, a distinction he says the judge erred by failing to appreciate. He says the Québec proceedings were improperly commenced while the *CCAA* stay was in place and they did not conclude until after it expired due to COVID-related delay, which does not change or detract from the fact that they should not have been commenced in the first place. Moreover, he says, the judge made an array of factual mistakes and erred by relying on the decision of the Québec Court when the *CCAA* proceeding in which his application was brought is controlled by this province. He also emphasizes that the *CCAA* is a federal statute and says issues of federal paramountcy arise and will be addressed in the proposed appeal.

[27] Mr. Laliberté goes on to submit that the proposed appeal is significant for insolvency practice generally as it will clarify the extent to which a creditor from another province can bypass a British Columbia *CCAA* stay order. He says the tactics of the QRA in this matter are part of a broader and persistent pattern of tax authorities throughout the country attempting to circumvent the *CCAA*’s carefully balanced priority scheme. He further emphasizes the severe nature of the prejudice

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that he faces resulting from the Québec conviction and contends that the interests of justice strongly favour the grant of leave.

[28] I am not persuaded by Mr. Laliberté's submissions.

[29] In my view, the proposed appeal lacks *prima facie* merit. In clear, cogent reasons, the judge applied well-established law to the facts as he found them based on the evidence. He made no apparent error in principle, law, or fact. His decision will be entitled to deference on appeal.

[30] I agree with the QRA that in his submissions before me and the Court below, Mr. Laliberté confuses the QRA's role in the *CCAA* proceedings, on the one hand, and on the other, the QRA's role in the penal proceedings. As is apparent from his reasons, the judge appreciated that, in the penal proceedings, the QRA via the DPPP was acting as a public prosecutor, not a creditor, and prosecuting Mr. Laliberté for his role in the failure of the penal parties to report and remit the amounts in question that were deducted from their employees' remuneration.

[31] Moreover, I am satisfied that the facts of the proposed appeal are highly unique. It raises no issue of public importance or precedential value, and it is of no importance in the *CCAA* proceedings themselves, which have long since concluded. All things considered, I conclude that the interests of justice would not be served by the grant of leave to appeal. Accordingly, I dismiss Mr. Laliberté's leave application.

"The Honourable Justice Dickson"

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